



**West Kenya Sugar Company Limited & another v Wafula & another (Suing  
as Legal Representatives of the Estate of Alfred Namaemo Wafula) (Civil  
Appeal 33 of 2023) [2025] KEHC 6170 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6170 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL APPEAL 33 OF 2023**

**RK LIMO, J**

**MAY 15, 2025**

**BETWEEN**

**WEST KENYA SUGAR COMPANY LIMITED ..... 1<sup>ST</sup> APPELLANT**

**ASMAN MAINA MUKOTA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CALEB SIMIYU WAFULA ..... 1<sup>ST</sup> RESPONDENT**

**WALTER WALIAULA WAFULA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF ALFRED  
NAMAEMO WAFULA**

*(Appeal against the judgment of Hon. S.K. Mutai (S.P.M)  
delivered on 11/9/23 in Kitale CMCC No.318 of 2021.)*

**JUDGMENT**

1. This is an appeal against the judgment of Hon. S.K. Mutai (S.P.M) delivered on 11/9/23 in Kitale CMCC No.318 of 2021. In that case the respondents sued the appellants for general damages. The cause of action arose on 12/11/2016 at a sugar plantation at Weoma Village when the 2<sup>nd</sup> appellant recklessly drove a tractor Reg No.KTBCB 9290 belonging to the 1<sup>st</sup> appellant and deliberately caused it to violently knock down and run over the deceased inflicting fatal injuries to him. At the time of the incident the deceased was aged 52 years old and was employed as a cane cutter.
2. After trial, the trial court found the appellant liable and entered judgment for the respondent as follows;
  - a. Pain and suffering - Kshs.50,000



- b. Loss of expectation of life - Kshs.10,000
  - c. Loss of dependency - Kshs.2,080,000
  - Total 2,230,000
3. The appellants felt aggrieved on quantum awarded and filed this appeal raising the following grounds namely;
- i. That the learned trial magistrate erred in law and in fact in adopting the wrong principles in assessment of damages payable under the *Fatal Accidents Act*.
  - ii. That the learned magistrate erred in law by failing to take into account the vagrancies and vicissitudes of life in adopting a multiplier of 13 years.
  - iii. That the learned magistrate erred by awarding excessive damages in the circumstances.
  - iv. That the trial magistrate failed to take into consideration the appellant's submissions.
4. In their written submissions through counsel dated 5/4/25, the appellants fault the trial court for adopting a multiplier of 13 years. In their view, a multiplier of 8 years was more reasonable and fair. They rely on the case of *EMK & Anor –vs- EOO (2018) eKLR* where they submit that a multiplier of 8 years was adopted in a case where the deceased was aged 50 years old.
5. They further fault the trial magistrate for adopting a multiplicand of 30,000/- in the absence of documentary proof. They submit that in such situations, adoption of minimum wage guideline was a better option adding that as per the Regulation of Wages (General Amendment) Order 2018 the minimum wage was Kshs.6,736.36/- per month.
6. On dependency ratio, the appellants submit that the level of dependency was not established. They contend that apart from the evidence indicating that the deceased had 9 children there was no evidence showing the ages of the children and it was difficult to establish if the deceased was a sole provider of his family considering that he was a lame person.
7. They submit that a dependency ratio of 1/3 was more justifiable faulting the trial court for adopting the ratio of 2/3 without assigning any reasons for it.
8. They urge this court to intervene and award the respondents reasonable award and setting aside what they consider excessive award.
9. The respondents on the other hand have opposed this appeal and have supported the trial court for adopting a multiplicand of 20,000/- submitting that the same was quite reasonable.
10. They further defend the multiplier of 13 years adopted by the trial court arguing that the retirement age for people living with disability is 65 years.
11. They urge this court to uphold the award given by the trial court submitting that the incident was more of murder rather than an accident.
12. This court has considered this appeal which is purely on quantum. The role of this court as a first appellate court is to re-evaluate or re-assess the evidence tendered and draw a conclusion regarding the decision reached by the trial court.
13. The evidence tendered showed that the deceased was employed as a cane cutter when he met his demise. There was no documentary evidence tendered to show what his income or terms of employment entailed.



14. The trial court took the respondents' evidence and found that a multiplicand of 20,000/- per month was fair because the deceased was physically challenged. There were no reasons given by the trial court on how he arrived at a multiplicand of 20,000/- or concluded that the deceased was earning 20,000/- per month on account of his physical disability. That was where the court fell into error.
15. In situations or cases where it is difficult to ascertain the income of a deceased person because of absence of documentary proof like pay slip, employment contract or any other evidence, the emerging jurisprudence is to award a lump sum or global sum depending on circumstances of age, social set up or any other indicator.
16. In this instance the deceased was aged 52 years. He was expected to work for another 8 years or so but even after retirement he would still be expected to offer moral and material support to his family. Taking the inflationary trend and decided cases a global award of Kshs.1.4 Million in my considered view is fair. I will therefore set aside the award by the trial court under that head and in its place award Kshs.1.4 Million. The other awards are upheld.
17. In short this appeal is partly allowed and the respondents are awarded as follows;
  - i. Pain and suffering - Kshs.50,000/-
  - ii. Loss of expectation of life - Kshs.100,000/-
  - iii. Loss of dependency -Kshs.1,400,000/-Total 1,550,000/-

The appellants will have costs in this appeal but will pay costs and interests of the above amount in the trial court.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Miss Langat for Appellant

Okile for Respondent

Duke/Chemosop –Court assistants

